IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2957 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AAYESHABEN TAIYABBHAI VOHRA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AJ SHASTRI for Applicant(s) : 1,MR JAL SOLI UNWALA for Applicant(s) : 1,
MR IM PANDYA, ASST. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR AJ YAGNIK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/06/2006

ORAL JUDGMENT

1. Heard Shri A.J.Shastri, learned counsel, for the applicant and Shri I.M.Pandya, learned APP, for the respondent No.1 – State.

2. The applicant has preferred this application seeking special leave to appeal against the judgment and order of acquittal passed by the J.M.F.C., Visnagar, dated 28th January, 2004 in Criminal Case No. 2324 of 1998 acquitting the original accused of the charges under Section 138 of the Negotiable Instruments Act.

3. It is noticed that the appeal accompanying the present application is not accompanied by certified copy of the order impugned in the appeal. The appeal memo is not even accompanied by simple copy of the judgment and order impugned in the appeal. The certified copy annexed to the memo of appeal is of a judgment and order dated 4th February, 2004 passed by the learned J.M.F.C., Visnagar, convicting one Shri Manubhai Kanjibhai Patel – accused in Criminal Case No. 165 of 1997.

4. The certified copy of the order dated 28th January, 2004 passed in Criminal Case No. 2324 of 1998 against which, the special leave is sought for filing appeal has not accompanied the memo of appeal or the present application, nor has the simple copy been supplied to the Registry. As per Rule – 38 and 349(i) of the Gujarat High Court Rules; 1993, it was incumbent upon the applicant to submit the certified

copy and also simple copy of the decree or order impugned in the appeal. This mandatory provision has not been complied with by the applicant. The application seeking special leave to appeal, therefore, cannot be considered in absence of either the certified copy or the simple copy of the impugned order dated 28th January, 2004 in Criminal Case No. 2324 of 1998 against which, the special leave is sought to appeal. In the result, the application fails and it deserves to be dismissed and is, accordingly, dismissed. Rule discharged.

(S.R.BRAHMBHATT, J.)

kdc.